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No. 06-1451

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

JIN AH LEE, decedent, by her estate representative, JUNGIL LEE, SANG CHUL LEE, decedent's father, and DUKSON LEE, decedent's mother,

Petitioners,

v.

ANC CAR RENTAL CORP., GENERAL MOTORS CORP., and HONG-JUN JEON,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the District Court and Ninth Circuit Court of Appeals properly dismissed this case based upon the lack of diversity of citizenship of the plaintiffs and defendants?

TABLE OF CONTENTS

Page

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

I. STATEMENT OF THE CASE 1

II. SUMMARY OF THE ARGUMENT 2

III. REASONS TO DENY THE WRIT 2

A. There Is No Jurisdiction Pursuant To 28 U.S.C. § 1332 2

B. The Treaty Of Friendship, Commerce And Navigation Has No Bearing Upon Whether Diversity Jurisdiction Exists 5

IV. CONCLUSION 6

TABLE OF AUTHORITIES

Page

CASES

Buechold v. Ortiz, 401 F.2d 371 (9th Cir. 1968) 5

Faysound Ltd. v. United Coconut Chemicals, Inc., 878 F.2d 290 (9th Cir. 1989) 3, 4

Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 98 S.Ct. 2396, 57 L.Ed2d 274 (1978) 3

Transure, Inc. v. Marsh and McLennan, Inc., 766 F.2d 1297 (9th Cir. 1985) 4, 5

United States v. McConney, 728 F.2d 1195 (9th Cir. 1984) 2

TREATIES AND STATUTES

28 U.S.C. § 1332(a)(2) 3, 4

28 U.S.C. § 1332(a)(3) 4

28 U.S.C. § 1332(c)(2) 1, 5

Treaty of Friendship, Commerce and Navigation, November 28, 1956, U.S.-South Korea, 8 U.S.T. 2217, T.I.A.S. No. 3097, 1957 WL 52986 (U.S. Treaty), Art. V(1) and XXII(1) 5

OTHER AUTHORITIES

Fed.R.Civ.P. 52(a) 2

I. STATEMENT OF THE CASE.

This case arises out of an automobile accident in which plaintiff Jin Ah Lee was killed when she was thrown from a motor vehicle manufactured by defendant General Motors Corporation (GM), owned and rented to customers by defendant ANC Car Rental Corporation (ANC) and driven by defendant Hong-Jun Jeon (Jeon). A10-14, 76-77.[1] This action was brought on behalf of Jin Ah Lee by her parents, Sang Chul Lee and Dukson Lee, and her estate representative, Jungil Lee. A9-10, 76-77. All plaintiffs are Korean nationals.[2] *Id.* Defendant Jeon is also a Korean national, while GM and ANC are Delaware and Florida corporations respectively. *Id.*

On October 18, 2004, the United States District Court for the District of Arizona entered an Order dismissing this case for lack of subject matter jurisdiction. A76-79. In its Order, the District Court found that all plaintiffs, including Jungil Lee, and defendant Jeon are Korean nationals. A77. It then determined that complete diversity jurisdiction does not exist due to the Korean citizenship of

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[1] References to the Appendix submitted to the Court of Appeals and part of the record below are referred to as "A" followed by the appropriate page numbers.

[2] Although Petitioners assert in their Petition for Writ of Certiorari that Jungil Lee is a citizen of the United States, they cite only paragraph 10 of their Complaint for that proposition. Petition at p. 10. Paragraph 10 of the Complaint, however, does not mention Jungil Lee. A10. Moreover, Jungil Lee's citizenship has no bearing upon the issue of whether diversity jurisdiction exists. Pursuant to 28 U.S.C. § 1332(c)(2) "the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent . . . " Thus, in this capacity Jungil Lee is deemed a Korean national regardless of her personal citizenship.

plaintiffs and defendant Jeon. A77-79. On appeal the Ninth Circuit Court of Appeals affirmed the judgment of the District Court. Appendix A, App. 1-5 to Petition for Writ of Certiorari.

II. SUMMARY OF THE ARGUMENT.

Because plaintiffs are all Korean nationals and defendant Jeon is a Korean national, complete diversity of citizenship between plaintiffs and defendants does not exist. Accordingly, the District Court and Ninth Circuit Court of Appeals properly determined that this case should be dismissed for lack of jurisdiction. There is no basis upon which the Petition for Writ of Certiorari should be granted.

III. REASONS TO DENY THE WRIT.

A. There Is No Jurisdiction Pursuant To 28 U.S.C. § 1332.

The District Court's factual finding that all plaintiffs and defendant Jeon are Korean nationals is reviewed on appeal under the deferential, clearly erroneous standard. *United States v. McConney*, 728 F.2d 1195, 1200 (9th Cir. 1984); *See* Fed.R.Civ.P. 52(a). The same is true for its finding that GM and ANC are, respectively, citizens of Delaware and Florida. *Id.* The District Court's application of those facts to the law is reviewed *de novo*. *Id.* at 1202.

The question presented by the Petition for Writ of Certiorari is whether diversity jurisdiction is defeated by the fact that all plaintiffs and one defendant

are Korean nationals, while the only United States citizens involved are defendants. Respondent Jeon submits that diversity jurisdiction is defeated on these facts.

Petitioners assert that the District Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(2), which provides for jurisdiction in actions between "citizens of a State and citizens of a foreign state." In order, however, for diversity jurisdiction to exist pursuant to § 1332(a)(2) there must be complete diversity between all plaintiffs and all defendants. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 373, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978); *Faysound Ltd. v. United Coconut Chemicals, Inc.*, 878 F.2d 290, 295 (9th Cir. 1989). In *Faysound* a Hong Kong corporation sued a group of Philippine and U.S. corporations. Upon determining that the Philippine defendants were indispensable parties, the Ninth Circuit Court concluded that there was no diversity jurisdiction under § 1332(a)(2) as both the plaintiff and one or more indispensable defendants were aliens. *Id.* at 294.

Because both Petitioners and Respondent Jeon are Korean nationals, the complete diversity required for jurisdiction under § 1332(a)(2) does not exist. Only if Jeon is dispensable and dismissed from this action could § 1332(a)(2) diversity jurisdiction exist. As the Ninth Circuit Court pointed out, however, Petitioners failed to request Jeon's dismissal in the District Court and another case against all these same defendants has been brought by Petitioners and is pending in the state court of Arizona. Appendix A, App. 3 to Petition for Writ of Certiorari.[3]

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[3] Interestingly the *Faysound* Court in rejecting plaintiffs' argument in favor of diversity jurisdiction pursuant to § 1332(a)(2) noted that

(Continued on following page)

Just as diversity jurisdiction is lacking under § 1332(a)(2), it is also lacking under § 1332(a)(3), which provides jurisdiction in cases between "citizens of different States and in which citizens or subjects of a foreign state are additional parties." As the Ninth Circuit Court, citing *Transure, Inc. v. March & McLennan, Inc.*, 766 F.2d 1297, 1298 (9th Cir. 1985), stated in its decision herein, "[u]nder the plain language of § 1332(a)(3), for jurisdiction to exist there must be both United States citizen plaintiffs and United States citizen defendants." Appendix A, App. 3 to Petition for Writ of Certiorari.

In *Transure* a California corporation and a British corporation sued two Delaware corporations and a South African corporation. 766 F.2d at 1298. While the Ninth Circuit Court did determine that the presence of alien corporations on both sides did not defeat diversity jurisdiction pursuant to § 1332(a)(3), it reached this conclusion only because there was a legitimate dispute between two United States corporations from different states, namely the California corporate plaintiff and Delaware corporate defendants. *Id.* at 1298. Specifically the *Transure* Court held that diversity jurisdiction is not defeated where

(1) there is a legitimate controversy between diverse citizens and aliens are additional parties; and

(2) there is complete diversity as to the citizens.

The *Transure* Court cited the example that under § 1332(a)(3) "jurisdiction would exist if a New Yorker and a Canadian sued a Californian and a German, assuming of course, that there

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"garden variety contract actions . . . can find an adequate forum in the courts of the states." 878 F.2d at 294.

was a legitimate dispute between the two Americans." *Id.* at 1298-99.

Only where there are U.S. citizens having complete diversity of citizenship on both sides of an action may diversity jurisdiction exist despite the presence of aliens as additional parties on both sides. That, however, is not the situation here. Here none of the plaintiffs are U.S. citizens. They are all aliens. The only United States citizens are defendants GMC and ANC. Moreover, the fact that the estate representative, Jungil Lee, may possibly be a United States citizen is of no consequence inasmuch as she is deemed to be a Korean citizen, as was the decedent, Jin An Lee, pursuant to 28 U.S.C. § 1332(c)(2).

B. The Treaty Of Friendship, Commerce And Navigation Has No Bearing Upon Whether Diversity Jurisdiction Exists.

Petitioners' assertion that jurisdiction is created by the Treaty of Friendship, Commerce and Navigation (FCN) is without merit. As this Court explained in *Buechold v. Ortiz*, the FCN Treaty merely grants to the Petitioners the same right of access to the Federal Courts as is enjoyed by citizens of the United States. 401 F.2d 371, 372 (9th Cir. 1968); *see* the U.S.–Korea Treaty of Friendship, Commerce and Navigation, 8 U.S.T. 2217, Articles V(1) and XXII(1) (Nov. 28, 1956). Thus, to establish diversity jurisdiction under 28 U.S.C. § 1332, Petitioners must establish complete diversity of citizenship as would a citizen of any state of this country. Petitioners cannot do so because both they and Respondent Jeon are citizens of Korea.

IV. CONCLUSION.

For the foregoing reasons this Court should deny Petitioners' request for a writ of certiorari and thereby affirm the judgment of the District Court and the Ninth Circuit Court of Appeals.

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